

A. G. Contract No. KR95 1062TRN
ADOT ECS File: JPA 95-87
Project No.: STP-FLA-0(1)P
TRACS No.: 0000 CN FLA SL356 01C
Section: Bike Path & Landscaping
Verde Street - Switzer Canyon

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE STATE OF ARIZONA

AND

THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into 25 July, 1995,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY
COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 AND 28-112 to enter into this agreement and has
by resolution, a copy of which is attached hereto and made a
part hereof, resolved to enter into this agreement and has
delegated to the undersigned the authority to execute this
agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes
Section 48-572 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has
authorized the undersigned to execute this agreement on behalf
of the City.

3. Congress has authorized appropriations for, but not
limited to, the construction of streets and primary, feeder and
farm-to-market roads; the replacement of bridges; the
elimination of roadside obstacles; and the application of
pavement markings.

NO. <u>19926</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>07/25/95</u>
<u>Gene Lee Hull</u> Secretary of State
By <u>Vicky Greenwood</u>

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide the State with the City funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The construction engineering work embraced in this agreement shall be accomplished by City forces. The work and the estimated cost are as follows: Bike Path and Landscaping.

Estimated Project Cost (excludes 15% CE)	\$ 751,547.00
Federal Aid Funds @ 66.53% (CAP)	\$ 500,000.00
Flagstaff City Funds @ 33.47% of \$751,547.00	\$ 251,547.00
Five percent (5%) Surcharge	\$ 37,577.00
Total City of Flagstaff Funds	\$ 289,124.00*

* This includes a 5% surcharge on the total cost as per Local Government Engineer memo of October 1991.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the City with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard

Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required.

Upon completion of the construction contract, the State shall return to the City any part of the funds deposited by the City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way will be acquired.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. The City will provide personnel to supervise construction. The FHWA will participate in the cost of construction supervision provided by the City at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by the City. All construction project change orders are to be approved by the State.

8. The City will supervise construction of the project in accordance with approved plans and specifications and the requirements of the applicable state and federal statutes, rules, or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the City will hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

9. State employees may perform any inspections of the project or audit any books or records of the City in order for the State to satisfy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City of Flagstaff
City Manager
211 West Aspen
Flagstaff, AZ 86001

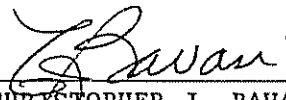
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

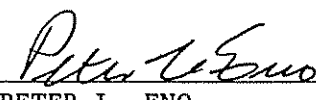
IN WITNESS WHEREOF, the parties have executed this agreement
the day and year first above written.

CITY OF FLAGSTAFF

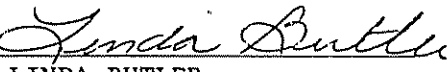
STATE OF ARIZONA

Department of Transportation

By 
CHRISTOPHER J. BAVASI
Mayor

By 
PETER L. ENO
Contract Administrator

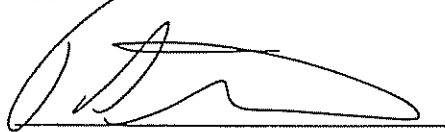
ATTEST:

By 
LINDA BUTLER
City Clerk

RESOLUTION

BE IT RESOLVED on this 23rd day of May 1995, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Flagstaff for the purpose of defining responsibilities for the construction of improvements to the Flagstaff Bike Path as a transportation enhancement project.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'Larry S. Bonine', is written over a horizontal line.

for LARRY S. BONINE
Director

RESOLUTION NO. 1996

A RESOLUTION APPROVING THE TERMS AND CONDITIONS OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE CITY OF FLAGSTAFF FOR THE CONSTRUCTION PHASE OF THE BIKE PATH AND LANDSCAPING (VERDE STREET-SWITZER CANYON) SECTION OF THE ROUTE 66 STREETScape PROJECT, AND AUTHORIZING THE CITY'S ENTRY INTO THE AGREEMENT.

WHEREAS, the Mayor and City Council have reviewed the terms and conditions of the proposed Intergovernmental Agreement between the State of Arizona and the City of Flagstaff (the "Agreement") whereunder the City of Flagstaff would request the State of Arizona to prepare documents and enter into a construction contract, as well as perform all work required by the Federal Highway Administration to qualify a highway, bridge and railroad grade crossing project (the "Project") to receive federal funds; and has found the terms and conditions thereof to be of benefit to the City of Flagstaff; and

WHEREAS, the Agreement shall remain in full force and effect until the completion of the Project; and

WHEREAS, the City will become obligated under the terms of the Agreement to advance costs to the State in the minimum amount of \$289,124.00 for the performance of work thereunder;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

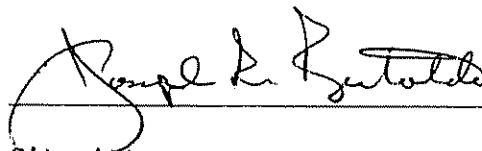
SECTION 1: The terms and conditions of the proposed Agreement are approved and the Mayor is authorized and directed to execute the Agreement on behalf of the City.

SECTION 2: The expenditure of the minimum estimated cost of \$289,124.00 for the work to be performed under the Agreement by the State is hereby authorized and approved. Any additions to that sum shall be submitted to the City of Flagstaff for review and approval in accordance with the terms of the Agreement.

APPROVAL OF THE FLAGSTAFF CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF FLAGSTAFF, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 29th day of June, 1995.



City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025

TELECOPIER : 542-4085

GRANT WOODS
ATTORNEY GENERAL

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR95-1062-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 19th day of July, 1995.

GRANT WOODS
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:lsr
8828G/110